

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DEMOCRACY NORTH CAROLINA; *et al.*,

Plaintiffs,

Case No. 1:23-CV-878

v.

FRANCIS X. DE LUCA, in his official
capacity as CHAIR OF THE STATE
BOARD OF ELECTIONS, *et al.*,

Defendants.

DEFENDANTS' JOINT PRE-TRIAL BRIEF

Plaintiffs' claims concern a single provision of the otherwise lengthy election omnibus bill, Senate Bill 747 ("S.B. 747"). The crux of Plaintiffs' claims is this—that changing from a two verification card mailing system for same-day registration ("SDR"), which undisputedly led to the counting of ballots by non-properly registered voters, to a single verification card system violates the constitutional rights of "young" voters. In support of their claims, Plaintiffs have no direct evidence of discrimination and no evidence that the bill drafters looked at age-related data, much less discriminated against an amorphously defined class of young voters.

Instead, Plaintiffs searched for *some* circumstantial evidence. None was found in discovery. Instead, this Court will hear about irrelevant or overblown statements from two

election integrity advocates, Cleta Mitchell and Jim Womack. To be clear, neither Mitchell nor Womack are members of the General Assembly, and neither had their preferred SDR changes enacted. It is undisputed that neither support the challenged Undeliverable Mail Provision (“UMP”) as enacted in S.B. 747. When discovery debunked Plaintiffs’ Mitchell and Womack-inspired conspiracy, Plaintiffs pivoted, now claiming (with no evidence and in some instances not even a single allegation in the Complaint) that the UMP causes an undue burden on military voters, people who move more frequently, and those who do not live in single family housing. The evidence at trial will show that these and all of Plaintiffs’ theories fail. The Court should enter judgment for Defendants on all claims.

PROCEDURAL BACKGROUND AND STATEMENT OF FACTS

Plaintiffs challenge the entirety of §10.(a) of S.B. 747, codified at N.C.G.S. §163-82.6B, which changed the mail verification process for same-day registration applicants in North Carolina. Specifically, Plaintiffs attack the change from two registration verification mailers to one, otherwise known as the UMP.¹ Plaintiffs seek “a declaratory judgment that Section 10(a) of S.B. 747 is unconstitutional under the First, Fourteenth, and Twenty-Sixth

¹ Despite now claiming to challenge §10.(a) in its entirety, Plaintiffs’ Complaint only states a claim against the UMP. Indeed, challenging all of §10.(a) is illogical because S.B. 747 did not change other SDR requirements, including: (1) providing a complete voter registration application; (2) providing proof of residence by presenting a document compliant with the Help America Vote Act (“HAVA”); (3) presenting a valid photo identification; and (4) reviewing and signing the voter application under penalty of perjury. N.C.G.S. §163-82.6B. Each of these requirements, except for photo-ID, have been present since the inception of SDR. 2007 N.C. Sess. Laws 253.

Amendments, and a permanent injunction barring Defendants from enforcing the same.” [D.E. 137 at 2].

The legislative history of S.B. 747 demonstrates that the bill drafting process functioned as intended. After the 2022 general election cycle, numerous organizations and constituents across North Carolina pressed legislators for a variety of electoral reforms. In response to this widespread demand, the General Assembly determined that it was necessary to enact comprehensive legislation addressing election integrity. Among its provisions, S.B. 747 created the single-mailer UMP, which Plaintiffs now contest.

Before S.B. 747, a two-mailer verification process was used to verify the addresses of SDR applicants during early voting. However, the dual-mailer verification process often failed because the second verification mailer was frequently returned as undeliverable after county canvass. This resulted in the inclusion of unregistered individuals’ ballots in the vote count. The General Assembly reasonably concluded that this recurring problem eroded public confidence in elections because it called the count into question weeks after the close of county canvass.

Accordingly, on June 1, 2023, S.B. 747 was introduced in the North Carolina Senate. As the bill’s primary sponsors, Senator Warren Daniel and Representative Grey Mills, will testify that the legislation’s central collective purpose was to enhance public confidence in the administration of North Carolina’s elections. In its original form, S.B. 747 proposed treating all SDR ballots as provisional. That proposal, however, drew

criticism from members of the public, including Plaintiffs. The North Carolina State Board of Elections (“State Board”) likewise raised concerns about the proposal’s administrability.

The next version of S.B. 747, introduced in the Senate on June 15, 2025, still required provisional ballots for SDR voters, but only in certain scenarios. Again, this proposal raised administrability concerns because of the need to process provisional ballots at county canvass. This time, the State Board recommended moving to a single verification mailing instead of provisional voting, and the General Assembly carefully considered this feedback.

When S.B. 747 crossed over to the House, the State Board’s recommendation was incorporated into a proposed committee substitute. Balancing administrative concerns with the public demand for election integrity, the General Assembly removed the provisional-ballot language and adopted the one-mailer system recommended by the State Board on August 15, 2023, now memorialized in the UMP. It is undisputed that the General Assembly never requested or relied upon age-related data, studies of SDR usage, or analyses of verification failure rates. Further, Plaintiffs cannot tie any comments from any legislator concerning “young” or college voters to any provision of S.B. 747, UMP or otherwise. To the contrary, as Senator Daniel and Representative Mills will confirm, the General Assembly acted to strike a balance between ballot access and electoral integrity, with no intent or reason to target young or student voters.

Lacking any direct evidence discriminatory intent, Plaintiffs instead seek to attribute the personal views of two private individuals—Jim Womack and Cleta Mitchell—to the General Assembly. This attempt fails for several reasons. First, neither Mitchell’s nor Womack’s preferred policies became law. Both initially sought the wholesale elimination of SDR altogether; when that failed, they advocated that SDR ballots be treated as provisional. Indeed, the elimination of SDR or having SDR ballots be provisional was 1 of 15 total legislative recommendations presented at the single meeting that Senator Daniel and others had with Womack and Mitchell on May 24, 2024. Neither SDR proposal became law.

Second, Plaintiffs ignore that other election integrity groups voiced similar concerns about SDR. In fact, Senator Daniel will confirm that numerous groups voiced concerns with SDR, not just Mitchell and Womack. So much so, in fact, that Senator Daniel considered revising SDR a “constituent issue.”

Third, Mitchell never communicated with one of the bill’s two primary sponsors. Womack corresponded briefly with Representative Mills, at times invoking Mitchell’s name without her authorization, but his efforts never translated into any meetings. Both Mitchell and Womack openly expressed disappointment with S.B. 747’s final form.

S.B. 747 became law on October 10, 2023, when the General Assembly overrode the Governor’s veto. N.C. Sess. Law 2023-140. In sum, the enactment of S.B. 747 reflects precisely what the federal and state Constitutions contemplate: a legislature responsive to

constituent concerns, attentive to competing viewpoints, and deliberate in crafting legislation that promotes both access to the ballot and the integrity of the electoral process. Plaintiffs now seek to recast this legislative responsiveness as unconstitutional, alleging that the UMP imposes an undue burden on “young” voters² and violates the Twenty-Sixth Amendment. Those claims rest on speculation rather than fact. No evidence shows that any legislator—or anyone with authority over S.B. 747—intended or believed that the UMP would disproportionately affect young voters. The trial evidence will confirm that the UMP represents a balanced and constitutional exercise of legislative judgment.

Around the same time the present case was filed, two parallel suits were brought by different plaintiffs in cases captioned, *Voto Latino v. Hirsch*, Case No. 1:23-cv-861 (M.D.N.C. 2023) (“*Voto Latino*”) and *Democratic National Committee v. Hirsch*, Case No. 1:23-cv-862 (M.D.N.C. 2023) (“*DNC*”). Due to a preliminary injunction order in *Voto Latino* regarding the UMP, 712 F. Supp. 3d 637 (M.D.N.C. 2024), the State Board issued an updated Numbered Memo 2023-05 (“Numbered Memo”) on January 29, 2024, detailing a comprehensive cure process. The cure process provided that if a single mail verification card is returned as undeliverable before the close of business two days before county canvass, then the county board of elections must check for address errors. If there are no address errors, the county board issues a cure notice letter and the voter can cure their ballot

² Plaintiffs rely on generalized allegations, attempting to construct a “class” of “young voters.” But that class is inherently amorphous and inconsistently defined. Even Plaintiffs’ own experts acknowledge that this broad categorization is both over- and under-inclusive.

by providing a different HAVA document with an address that matches their voter registration. If the applicant fails to cure by the county board's canvass meeting, then the ballot is removed from the count. If, on the other hand, the verification card is not returned as undeliverable by the close of business two days before canvass, the voter's ballot remains in the official count. The 2024 primary and general elections were successfully conducted using this process.

On April 22, 2025, all parties in *Voto Latino* and *DNC* jointly moved for a consent judgment, which this Court granted on April 28, 2025. Consent Judgment, *Voto Latino v. Hirsch*, No. 1:23-CV-861, D.E. 101 (M.D.N.C. April 28, 2025). The Consent Judgment permanently enjoins the State Board from removing the votes of any voter who has provided contact information in the registration process and whose first notice required under N.C.G.S. §163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the second business day before the county canvass, without first providing such voter notice and an opportunity to remedy the address verification failure. Consent Judgment at 7. The county board of elections must provide notice of the verification failure via U.S. mail within one business day of receipt of the undeliverable notice, and, if additional contact information is provided by the voter, the county board must attempt to contact the voter. *Id.* at 7-8. Voters may then cure by 5:00 p.m. on the day before county canvass, or, if the voter cannot meet the initial deadline, documentation may be submitted in-person at county canvass. *Id.* at 8. The parties and the Court agreed that

“the terms of this Consent Judgment constitute a fair, adequate, and reasonable settlement of the issues raised with respect to the Undeliverable Mail Provision[.]” *Id.* at 4.

Additionally, on July 21, 2025, the State Board updated Numbered Memo 2023-05, to reflect that the administrative and technical guidance for county boards of election in the Numbered Memo were necessary to comply with the *Voto Latino* Consent Judgment. When viewed as a whole, the evidence presented at trial will confirm that the UMP arose from a normal legislative process, devoid of the discriminatory scheme that Plaintiffs allege, and that the UMP does not impose an undue burden on the constitutional rights of young voters.

STATEMENT OF THE QUESTION PRESENTED

- I. Will Plaintiffs meet their burden to prevail on their remaining claims at trial?

ARGUMENT

Trial evidence, this brief, and Defendants’ post-trial filings will show that Plaintiffs’ remaining claims are unsupported in law and evidence. Plaintiffs distort the facts, the law, and the legislative record to suggest a constitutional controversy where none exists. They ask this Court to view a neutral, administratively sound election provision through a warped lens—one that ignores the actual operation of the law, its purpose, and the safeguards already in place. And contrary to settled law, Plaintiffs urge this Court not to presume constitutionality or legislative good faith, but to infer nefarious purpose and illegality. Rather than engage with the legal standards governing their remaining claims, Plaintiffs substitute speculative arguments for proof, and a one-sided narrative for

meaningful analysis. Their claims rely on conflating correlation with causation and muddling preference with disenfranchisement. But when the facts are viewed clearly and the law applied faithfully, Plaintiffs' claims collapse.

I. Applicable Legal Framework.

The Constitution endows states with the authority to regulate their own elections. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections.”). Pursuant to this delegation, the Supreme Court routinely affirms a State’s chosen electoral scheme, even accepting that it may “inevitably affect[]—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Anderson*, 460 U.S. at 788. “Nevertheless, the state’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.” *Id.*

When asked to examine the alleged motivations behind a statute’s inception or its effect, courts “*must* afford the state legislature a presumption of good faith.” *N. Carolina State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020) (citing *Abbott v. Perez*, 585 U.S. 579, 603 (2018)) (emphasis in original); *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961). Imputing bad faith upon a current legislature because of its predecessors’ actions ignores this directive, as “a legislature’s past acts do not condemn the acts of a later legislature[.]” *Raymond*, 981 F.3d at 298. Similarly, it is well-settled that

the personal views of a few legislators or third parties do not necessarily constitute the beliefs of the entire body. *See id.* at 307; *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 195-96 (2003). This is especially true when those views do not become law. *S.C. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1261-62 (4th Cir. 1989) (collecting cases). At base, legislators are entitled to consider public input, especially of constituents, without being deemed to endorse every alleged motivation behind it. Constitutional scrutiny focuses on governmental purpose—not the personal beliefs of some unelected advocates. *City of Cuyahoga Falls*, 538 U.S. at 195-96.³

All parties agree that *Anderson-Burdick* applies to Plaintiffs' Undue Burden claim. For the reasons discussed *infra*, the same test should apply to Plaintiffs' Twenty-Sixth Amendment claim. However, as will be established both herein and during trial, Plaintiffs' remaining claims fail regardless of the evidentiary test applied.

II. Plaintiffs' Undue Burden Claim Fails.

Under the *Anderson-Burdick* framework, heightened scrutiny applies only when a law imposes a severe burden on voting rights, in which case the law must be “narrowly

³ As discussed, neither Mitchell nor Womack's views on SDR became law. This is far from a wholesale endorsement found in cases where third-party intent was imputed on a legislature. *Cf. Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025) (several legislators expressly credited the third party with the passage of the challenged legislation); *Stout v. Jefferson Cnty. Bd. of Ed.*, 882 F.3d 988 (11th Cir. 2018) (third party's members became members of the governmental entity who passed the challenged legislation); *A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356, 366 (4th Cir. 2008); *Grp. Home on Gibson Island, LLC v. Gibson Island Corp.*, 144 F.4th 522, 538 (4th Cir. 2025) (public comments by decisionmakers promising to take a certain action even if unlawful).

drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434. In contrast, a non-discriminatory, globally applicable law will be upheld if justified by important state interests. *Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 716-17 (4th Cir. 2016). “The requirement that states articulate their asserted regulatory interests is not a high bar.” *Buscemi v. Bell*, 964 F.3d 252, 265 (4th Cir. 2020). But in reviewing a challenged statutory scheme, the trial court must look at the state’s entire electoral system, not simply the challenged provision in isolation. *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020) (citing *Burdick*, 504 U.S. at 433-34); *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014).

a. The UMP Is Not A “Severe” Burden, And Rational Basis Review Is Appropriate.

The *Anderson-Burdick* framework is not subject to a “litmus-paper test.” *Anderson*, 460 U.S. at 789. Instead, it is incumbent upon the trial court to make “hard judgments,” weighing the facts and evidence presented. *Crawford v. Marion Cnty. Bd. of Elections*, 553 U.S. 181, 190 (2008). Here, those facts and evidence reveal that the UMP is applicable in equal force to all SDR voters. Even assuming that the UMP creates some burden on the right to vote, that burden is far from severe, and it is justified by legitimate interests in election integrity and efficient administration. *S.C. Green Party v. S.C. State Election Comm’n*, 612 F.3d 752, 759 (4th Cir. 2010). This evidence defeats Plaintiffs’ claims from their inception.

The UMP is a facially neutral law, preserving SDR during early voting while enabling timely address verification. This is far removed from the narrow subset of burdens

which courts define as “severe.” *Crawford*, 553 U.S. at 189-91; *Democracy N. Carolina v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 213 (M.D.N.C. 2020) (surveying cases). While there is no set measurement of severity, precedent clarifies that severe burdens are often those “irrelevant to [a] voter’s qualifications.” *Crawford*, 553 U.S. at 189-90; *Greidinger v. Davis*, 988 F.2d 1344, 1350 (4th Cir. 1993) (observing that the Supreme Court “has distinguished between provisions that result in ‘an absolute denial of the franchise’ and provisions that made ‘casting a ballot easier for some’”). The same principles hold true when comparing a uniform law versus one with significantly varying degrees of disparate treatment. *Delaney v. Bartlett*, 370 F. Supp. 2d 373, 378, 380-81 (M.D.N.C. 2004). Here, the UMP falls into the former of the two categories and is subject to rational basis review. This means the UMP should be upheld if there are cognizable state interests supporting the statute’s passage. *Pisano*, 743 F.3d at 934-35, 937; *New Georgia Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1295-96 (N.D. Ga. 2020) (finding a statute which, unlike S.B. 747, expressly treated voters differently based upon age is a “minimal” burden, supported by legitimate state interests).

Further, the Fourth Circuit has found burdens to not be severe, even in similar circumstances when there is expert evidence showing potential favoritism to discernable groups of voters. *Nelson v. Warner*, 12 F.4th 376, 381-83 (4th Cir. 2021) (considering expert evidence which purported to show an advantageous and potentially decisive boost

to certain candidates and voters in a ballot order statute, but concluding that the statute was not an unconstitutional burden). Tellingly, Plaintiffs adduce no such evidence here.

b. Plaintiffs Cannot Articulate Any Burden From The UMP Sufficient To Outweigh Legislative Good Faith Or The General Assembly's Interests.

Plaintiffs claim that an alleged “preference” by some young voters for SDR is outweighed by the state’s interest in improving the prior version of the UMP which resulted in ballots counting despite having failed mail verification after canvass. [D.E. 1 ¶¶32–42, 82–91]. But there is no constitutional protection for a voter’s preference for one voting method over another. *McDonald v. Bd. of Election Comm’rs of Chicago*, 394 U.S. 802, 807-08 (1969). Nor is there protection for voter inaction. *Rosario v. Rockefeller*, 410 U.S. 752, 757–58 (1973); *Burdick*, 504 U.S. at 438. North Carolina offers two registration options: a 340-day pre-election period with two mailer verifications, or same-day registration during early voting with one mailer and the opportunity to cure. N.C.G.S. §§ 163-82.6B, 163-82.7; *see also Voto Latino*, No. 1:23-cv-861, D.E. 101 (M.D.N.C. Apr. 28, 2025). These rules apply equally to all voters. Plaintiffs’ objection to the UMP’s single-mailer process ignores that it is a non-mandatory, uniformly applied registration option which nearly always verifies eligible voters.

Moreover, legislative enactments are presumed constitutional. *McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961). The state need not adopt the least burdensome method to address an issue, only one that reasonably advances important interests. *Nelson*, 12 F.4th at 390. Courts consistently recognize election integrity and public confidence as

legitimate interests. *Crawford*, 553 U.S. at 197; *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 633-35 (2016). The UMP advances these interests by ensuring voter residency and timely canvass completion. *Democracy N.C.*, 476 F. Supp. 3d at 208.

The UMP is the quintessential “evenhanded restriction[] that protect[s] the integrity and reliability of the electoral process itself.” *Crawford*, 553 U.S. at 189-90. Driven by cognizable election administration concerns, the UMP is simply a mechanism for improving verification of SDR applicants’ eligibility to vote to ensure finality by the time of county canvass—which occurs a little under two weeks from the last day of early voting. At its core, the UMP is a sensible exercise of legislative discretion. Rather than meaningfully engage with these legitimate interests, Plaintiffs conclude that any burden imposed is automatically “severe” and should be examined under strict scrutiny. This conclusory argument is unsupported by evidence or the law.

Moreover, Plaintiffs’ arguments ignore that both the Supreme Court and the Fourth Circuit have upheld more restrictive electoral schemes. *See, e.g., Burdick*, 504 U.S. 428 (complete ban on write-in voting); *Nelson*, 12 F.4th 376 (ballot order statute uniformly providing one party and its voters discernible electoral advantages over others). Plaintiffs offer nothing beyond speculation to further their labeling of the UMP as a “severe” burden on a subset of SDR voters. But calling a burden “severe” is not enough to make it such. *Crawford*, 553 U.S. at 208 (Scalia, J., concurring) (“Very few new election regulations

improve everyone's lot, so the potential allegations of severe burden are endless.”). The evidence at trial will show that the UMP is grounded in well-recognized legislative interests. Accordingly, Plaintiffs’ Undue Burden claim fails.

III. Plaintiffs’ Twenty-Sixth Amendment Claim Fails.

The Twenty-Sixth Amendment provides that “[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged...on account of age.” U.S. Const. amend. XXVI, § 1. A denial of the right to vote occurs only when a law “absolutely prohibits” someone from voting. *Tex. Democratic Party v. Abbott* (“*TDP II*”), 978 F.3d 168, 188 (5th Cir. 2020). An abridgment occurs only when a restriction is imposed because of voters’ age. *TDP II*, 978 F.3d at 189.

The Twenty-Sixth Amendment protects against age-based discrimination, not distinctions based on education or voting experience. Plaintiffs fail to identify any case affirming the viability of their proposed “young voter” class under circumstances like these.⁴ Nevertheless, even assuming that Plaintiffs have identified a proper age-based class of “young voters,” their Twenty-Sixth Amendment claim still fails.

a. The *Anderson-Burdick* Framework is the Proper Analysis for Plaintiffs’ Twenty-Sixth Amendment Claim.

Although this Court previously recognized that there is no consensus as to the standard governing Plaintiffs’ Twenty-Sixth Amendment claim, [D.E. 63 at 26], the

⁴ To the extent that Plaintiffs rely on *Lee v. Virginia State Board of Elections*, that reliance is misplaced; the court in *Lee* did not endorse “young voters” as a protected class but merely assumed such a class *arguendo* and ultimately found no discriminatory intent. 188 F. Supp. 3d at 609 n.18.

theories and facts presented are more conducive to *Anderson-Burdick*'s framework rather than that of *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977).⁵ Indeed, when this Court previously confronted challenges to the UMP and competing arguments for diverging evidentiary tests, it chose to apply *Anderson-Burdick*. *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 665 (M.D.N.C. 2024) ("Circuit courts have applied *Anderson-Burdick* to cases across the election litigation spectrum."). Although *Voto Latino* did not allege a Twenty-Sixth Amendment claim, this Court's rationale carries equal weight—*Anderson-Burdick* is the proper lens to analyze election law challenges like the ones Plaintiffs bring here.

While *Anderson-Burdick* is typically applied to election law challenges, *Voto Latino*, 712 F. Supp. 3d at 665 (collecting cases), *Arlington Heights* is reserved for claims of discriminatory intent targeting a suspect class. *N. Carolina State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020). More specifically, *Arlington Heights* is generally limited to claims of racial discrimination or discrimination affecting a cognizable, protected class. *See, e.g., Raymond*, 981 F.3d at 303 (discussing *Arlington*

⁵ While Plaintiffs have previously cited a single case, *League of Women Voters of Florida, Inc., v. Detzner*, to claim that there is a growing "consensus" of applying *Arlington Heights* to Twenty-Sixth Amendment claims, *Detzner*'s citations prove why this question is far from settled. 314 F. Supp. 3d 1205, 1221 (N.D. Fla. 2018) (citing *One Wis. Inst., Inc. v. Thomsen*, 198 F.Supp.3d 896, 926 (W.D. Wis. 2016), which was largely overturned on appeal in *Luft*, 963 F.3d at 665, and *Lee*, 188 F. Supp. 3d at 609 (E.D. Va. 2016), where the Fourth Circuit was skeptical of *Arlington Heights* as applied to the Twenty-Sixth Amendment).

Heights factors, including “whether the law ‘bears more heavily on one race than another’”).

Even if Plaintiffs can identify a cognizable class of “young” voters, which they cannot, age is not a suspect classification. *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 63 (2000). As such, the underlying purpose of *Arlington Heights*, rooting out intentionally discriminatory acts targeting protected classes, is inapposite to the claims presented. *See, e.g., Raymond*, 981 F.3d at 303. However, regardless of the test applied, Plaintiffs uniformly fail to carry their evidentiary burden.

b. Plaintiffs’ Twenty-Sixth Amendment Claim Fails Under *Anderson-Burdick*.

For the same reasons as those set forth on pages 10-14, Plaintiffs’ Twenty-Sixth Amendment claim fails under *Anderson-Burdick*. Not only is the UMP not a “severe” burden on the right to vote, but Plaintiffs cannot identify any evidence sufficient to overcome the presumption of legislative good faith or the General Assembly’s established regulatory interests. Rather, the UMP is a uniform election regulation, equally applicable to all SDR registrants, and backed by cognizable state interests. There is simply nothing in the record or evidence indicating otherwise.

c. Plaintiffs’ Twenty-Sixth Amendment Claim Fails Under *Arlington Heights*.

Defendants maintain that *Arlington Heights* is not the appropriate test to apply in this case, because age—unlike race—is not an immutable or suspect characteristic. *Kimel*,

528 U.S. at 63. But even if *Arlington Heights* is appropriate—which it is not—Plaintiffs still fail to demonstrate a constitutional violation.

Under *Arlington Heights*, courts assess a variety of non-exhaustive factors, including:

(1) evidence of a “consistent pattern” of actions by the decision making body disparately impacting members of a particular class of persons; (2) historical background of the decision, which may take into account any history of discrimination by the decision making body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decisionmakers on the record or in minutes of their meetings.

Sylvia Dev. Corp. v. Calvert Cnty., 48 F.3d 810, 819 (4th Cir. 1995) (citing *Arlington Heights*, 429 U.S. at 266-68). Heightened scrutiny applies only if an “invidious discriminatory purpose” was a motivating factor. *Arlington Heights*, 429 U.S. at 265-66. Mere “rancorous legislative history” is insufficient where the central facts show no discriminatory purpose. *South Carolina v. United States*, 898 F. Supp. 2d 30, 45 (D.D.C. 2012). Nor is disproportionate impact alone enough. *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 926 (W.D. Wis. 2016), *aff’d in part, vacated in part on other grounds*, *Luft*, 963 F.3d at 665. Instead, Plaintiffs must show that the law imposes burdens that voters cannot overcome with reasonable effort. *Thomsen*, 198 F. Supp. 3d at 926. While discriminatory purpose does not need to be the sole or primary factor, the question is whether the legislature enacted a law “‘because of,’ and not ‘in spite of,’ its adverse effects upon an identifiable group.” *Personnel Adm’r of Mass. v. Feeny*, 442 U.S. 256, 279 (1979).

“This demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *United States v. Johnson*, 122 F. Supp. 3d 272, 356 (M.D.N.C. 2015).

In its Order on Summary Judgment, this Court rightly recognized that Plaintiffs “have not produced direct evidence that members of the General Assembly sought to discriminate against young voters[.]” [D.E. 149 at 6]. That is because no such evidence exists. As a result, Plaintiffs are limited to whatever circumstantial evidence is available. *Johnson*, 122 F. Supp. 3d at 356. But even that evidence is sorely lacking.

Plaintiffs’ entire theory of discriminatory intent is premised upon select comments of third parties and conclusory allegations of disproportionate impact. But Plaintiffs’ own expert did not engage in a disparate impact analysis, and the record reflects that Plaintiffs’ targeted third parties’ views never became law. Instead, Plaintiffs’ arguments against the UMP rely heavily on the Fourth Circuit’s opinion in *McCrory*, 831 F.3d at 204. Not only is this reliance questionable in light of *Raymond*, cabining *McCrory* to its facts, 981 F.3d 295, but *McCrory* is readily distinguishable from the facts and evidence here.

First, unlike *McCrory*, there was indisputably no request for any relevant demographic data from any legislator here. 831 F.3d at 216. Similarly, there are no comparable comments or suspect circumstances from which the Court could infer potential ulterior motives. *C.f. id.* at 214. Instead, Plaintiffs ask the Court to find such motives based on little more than a sparse selection of comments from unelected individuals. But those statements fail to carry Plaintiffs’ burden.

The comprehensive legislative history of the UMP reflects legitimate goals of election administration and integrity—including ensuring voter residency and election finality at the time of canvass—not age-based discrimination. *Raymond*, 981 F.3d at 907-11. Plaintiffs concede the General Assembly sought to balance access with integrity in drafting the UMP. [D.E. 1 ¶¶82-84]. Their criticisms focus not on the legislative process itself, but on unsubstantiated theories of alleged influence by two third parties. [D.E. 1 ¶¶39-40]. Moreover, even if Plaintiffs could point to a potentially discriminatory comment from a legislator concerning S.B. 747—which they cannot—such a comment does not establish intent, especially if other legislators supported the bill for legitimate reasons. *Brnovich v. DNC*, 594 U.S. 647, 687-90 (2021). The only age-related comments by (unnamed) legislators that Plaintiffs cite were in reference to a different bill. [D.E. 1 ¶41].⁶ As courts have held, such isolated remarks do not establish intent. *Brnovich*, 594 U.S. at 687-90 (2021); *see also South Carolina*, 898 F. Supp. 2d at 45. Plaintiffs’ own expert, Dr. Grumbach, admitted he did not assess legislative intent. And both primary bill sponsors will testify that age was not a factor in drafting S.B. 747.

Furthermore, *Brnovich* confirms that the identity of a proposal’s originator is irrelevant where the legislative record shows it was enacted for legitimate reasons. 594 U.S. at 687–90. Senator Daniel and Representative Mills will confirm that age was not a factor in S.B. 747’s passage. Evidence at trial will show that the State Board’s suggestion

⁶ Notably, these remain just allegations. There was no discovery or evidence on Plaintiffs’ pre-trial disclosures related to this allegation.

of the UMP was to ensure the administrative feasibility of the proposed legislation. Further evidence at trial will confirm that the State Board's suggestion was incorporated into the final version of S.B. 747, which was largely enacted in response to constituent concerns about election administration and integrity, address verification, and election finality.

Plaintiffs also fail to show any deviation from normal legislative procedure. Legislators are entitled to meet with constituents and hear competing viewpoints on issues. It is not unusual for outside groups to circulate proposed bill language, and it is not unusual for groups, including Plaintiffs here, to claim credit for legislative action, whether deserved or not. Additionally, the legislative process behind the drafting of the UMP spanned several months and was not abrupt or rushed. *Raymond*, 981 F.3d at 305-06 (five days of legislative debate, with time for amendments, was not abrupt or hurried). Furthermore, it is undisputed that the bill sponsors did not request SDR usage data, and it is undisputed that the Legislature had no age-specific SDR data at its disposal. *C.f. McCrory*, 831 F.3d at 216. Age was not a motivating factor in the drafting of the UMP.

Nor is there any evidence of any “consistent pattern” of the General Assembly legislating in a manner which disproportionately impacts young voters, let alone in S.B. 747. Plaintiffs claim “nearly 1/3” of same-day registrants are young voters [D.E. 1 ¶4], but this figure is derived through the “sort of statistical manipulation” that courts routinely reject. *Brnovich*, 594 U.S. 647, 680-81 (2021); *Holmes v. Moore*, 886 S.E.2d 120, 140-41 (N.C. 2023) (discussing flaws in preliminary injunction expert Dr. Quinn's analysis). Data

from Plaintiffs' own expert, Dr. Quinn, shows that young SDR voters actually represent just 0.7% of the total vote. Although these figures are framed as evidence of disparate impact by Plaintiffs, they actually provide a "distorted picture" of what are, in absolute terms, only small differences. *Holmes*, 886 S.E.2d at 140-41. These arguments are insufficient to carry Plaintiffs' burden. *Brnovich*, 594 U.S. at 680-81.

Competing evidence from Legislative Defendants' expert, Dr. Paul White provides the full picture. As the only expert to conduct a disparate impact analysis, Dr. White, will demonstrate that the UMP creates no statistically significant impact on voters under age 26. In fact, the denial rate for younger registrants receiving a second mailer is within a fraction of a percent compared to the denial rate for older registrants. Dr. White therefore concluded that there was no statistical significance between the two sets of denial rates, further reinforcing the conclusion that the second mailer process did not systematically impact younger voters in any meaningful way.

Plaintiffs' arguments about young voters' reliance on SDR are speculative. Most college students move well before SDR begins, undermining the claim that standard registration is inaccessible. Plaintiffs also claim that young voters have "inflexible" schedules but provide no comparison to voters outside of their amorphously defined class.⁷ Nor do Plaintiffs account for North Carolina's seventeen days of early voting, including

⁷ The proposition that a college student, even one with a full courseload, has a schedule that is somehow as inflexible as an older adult working a forty-plus hour workweek, is questionable at best.

weekends (when classes do not typically meet) and extended hours. Finally, Plaintiffs argue that because “many” young voters have only recently become eligible, the process is harder for them to navigate. But the vast majority of 18–25-year-olds are not necessarily new to the voter registration process. Indeed, North Carolina is one of just eighteen states that allows preregistration beginning at age 16. N.C.G.S. §§ 163-82.4(e)(2), 163-82.6(h).

It is therefore unsurprising that experts and evidence will show that North Carolina ranks in the top half of all states for youth voter turnout. In fact, the same evidence will reveal that youth registration increased in 2024 compared to 2020, and turnout exceeded the national average. In fact, North Carolina’s youth voter turnout increased after enactment of the very law Plaintiffs challenge. It defies logic that an actual discriminatory intent, impact, or undue burden exists in the face of historic youth voter turnout during the first elections held under the UMP, as modified.

IV. Plaintiffs Are Bound By The Allegations In Their Complaint.

It is well-established that “a plaintiff may not raise new claims after discovery has begun without amending his complaint.” *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 617 (4th Cir.2009). When amending a complaint would result in undue prejudice to the opposing party, denial of the amendment is warranted. *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980). The closer a case gets to trial, the less likely the plaintiff can advance a viable reason for amendment. *Matrix Cap. Mgmt. Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 193 (4th Cir. 2009).

Based on Plaintiffs' representations at the July 15, 2025 pretrial conference, their pretrial disclosures, and their deposition designations,⁸ Defendants anticipate that Plaintiffs may attempt to collaterally attack the *Voto Latino* consent judgment or introduce trial evidence concerning groups of voters not identified in their Complaint. This late-stage about-face is both highly prejudicial and improper. While this Court has wide discretion in determining the admissibility of evidence, *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008), admissibility is not guaranteed on an unpled claim because it also bears on a properly pled claim. *Quillen v. Int'l Playtex, Inc.*, 789 F.2d 1041, 1043-44 (4th Cir. 1986).

Notably, Plaintiffs chose not to amend their Complaint to challenge the Consent Judgment or the Numbered Memo's cure provision. To the extent Plaintiffs intend to put on evidence about the cure provision, a collateral attack for the purposes of establishing constitutional liability under the Twenty-Sixth Amendment is plainly outside the scope of this dispute.⁹ That said, the Consent Judgment and Numbered Memo's cure provision may be used to assess whether the law, as it currently stands, presents an undue burden on young

⁸ For example, Plaintiffs designated deposition testimony from the Cumberland County Board of Election 30(b)(6) deponents concerning military and uniformed overseas voters, to which Defendants jointly objected. [D.E. 156-2, 156-4, 156-5]. Military voters are a unique class that require analyzing a different set of election rules not challenged here. Plaintiffs' Complaint cannot reasonably be interpreted as stating a claim for military voters.

⁹ This is distinguishable from *McCrary*, where at least one plaintiff in the consolidated actions amended their complaint to include a challenge to the reasonable impediment exception passed in H.B. 836. *United States v. North Carolina*, No. 1:13-cv-861, D.E. 365 (M.D.N.C. Nov. 6, 2015).

voters' right to vote. The evidence will show that the specific context of the UMP and the procedural safeguards in place do not impose an undue burden.

CONCLUSION

The Court should enter judgment for Defendants on all claims.

Respectfully submitted, this the 1st day of October, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 6,243/6,250 words as counted by the word count feature of Microsoft word.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 1st day of October, 2025, the foregoing was filed and served upon all counsel of record via the Court's CM/ECF system.

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